

106TH CONGRESS
1ST SESSION

S. 1902

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Japanese Imperial
5 Army Disclosure Act”.

1 **SEC. 2. ESTABLISHMENT OF JAPANESE IMPERIAL ARMY**
2 **RECORDS INTERAGENCY WORKING GROUP.**

3 (a) DEFINITIONS.—In this section:

4 (1) AGENCY.—The term “agency” has the
5 meaning given such term under section 551 of title
6 5, United States Code.

7 (2) INTERAGENCY GROUP.—The term “Inter-
8 agency Group” means the Japanese Imperial Army
9 Records Interagency Working Group established
10 under subsection (b).

11 (3) JAPANESE IMPERIAL ARMY RECORDS.—The
12 term “Japanese Imperial Army records” means clas-
13 sified records or portions of records that pertain to
14 any person with respect to whom the United States
15 Government, in its sole discretion, has grounds to
16 believe ordered, incited, assisted, or otherwise par-
17 ticipated in the experimentation and persecution of
18 any person because of race, religion, national origin,
19 or political option, during the period beginning Sep-
20 tember 18, 1931, and ending on December 31,
21 1948, under the direction of, or in association
22 with—

23 (A) the Japanese Imperial Army;

24 (B) any government in any area occupied
25 by the military forces of the Japanese Imperial
26 Army;

1 (C) any government established with the
2 assistance or cooperation of the Japanese Impe-
3 rial Army; or

4 (D) any government which was an ally of
5 the Imperial Army of Japan.

6 (4) RECORD.—The term “record” means a Jap-
7 anese Imperial Army record.

8 (b) ESTABLISHMENT OF INTERAGENCY GROUP.—

9 (1) IN GENERAL.—Not later than 60 days after
10 the date of enactment of this Act, the President
11 shall establish the Japanese Imperial Army Records
12 Interagency Working Group, which shall remain in
13 existence for 3 years after the date the Interagency
14 Group is established.

15 (2) MEMBERSHIP.—The President shall appoint
16 to the Interagency Group individuals whom the
17 President determines will most completely and effec-
18 tively carry out the functions of the Interagency
19 Group within the time limitations provided in this
20 section, including the Historian of the Department
21 of State, the Archivist of the United States, the
22 head of any other agency the President considers ap-
23 propriate, and no more than 3 other persons. The
24 head of an agency appointed by the President may
25 designate an appropriate officer to serve on the

1 Interagency Group in lieu of the head of such agen-
2 cy.

3 (3) INITIAL MEETING.—Not later than 90 days
4 after the date of enactment of this Act, the Inter-
5 agency Group shall hold an initial meeting and begin
6 the functions required under this section.

7 (c) FUNCTIONS.—Not later than 1 year after the date
8 of enactment of this Act, the Interagency Group shall, to
9 the greatest extent possible consistent with section 3 of
10 this Act—

11 (1) locate, identify, inventory, recommend for
12 declassification, and make available to the public at
13 the National Archives and Records Administration,
14 all classified Japanese Imperial Army records of the
15 United States;

16 (2) coordinate with agencies and take such ac-
17 tions as necessary to expedite the release of such
18 records to the public; and

19 (3) submit a report to Congress, including the
20 Committee on Government Reform and Oversight of
21 the House of Representatives, describing all such
22 records, the disposition of such records, and the ac-
23 tivities of the Interagency Group and agencies under
24 this section.

1 (d) FUNDING.—There are authorized to be appro-
2 priated such sum as may be necessary to carry out the
3 provisions of this Act.

4 **SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS.**

5 (a) RELEASE OF RECORDS.—

6 (1) IN GENERAL.—Subject to paragraphs (2),
7 (3), and (4), the Japanese Imperial Army Records
8 Interagency Working Group shall release in their en-
9 tirety Japanese Imperial Army records.

10 (2) EXCEPTION FOR PRIVACY.—An agency head
11 may exempt from release under paragraph (1) spe-
12 cific information, that would—

13 (A) constitute a clearly unwarranted inva-
14 sion of personal privacy;

15 (B) reveal the identity of a confidential
16 human source, or reveal information about the
17 application of an intelligence source or method,
18 or reveal the identity of a human intelligence
19 source when the unauthorized disclosure of that
20 source would clearly and demonstrably damage
21 the national security interests of the United
22 States;

23 (C) reveal information that would assist in
24 the development or use of weapons of mass de-
25 struction;

1 (D) reveal information that would impair
2 United States cryptologic systems or activities;

3 (E) reveal information that would impair
4 the application of state-of-the-art technology
5 within a United States weapon system;

6 (F) reveal actual United States military
7 war plans that remain in effect;

8 (G) reveal information that would seriously
9 and demonstrably impair relations between the
10 United States and a foreign government, or se-
11 riously and demonstrably undermine ongoing
12 diplomatic activities of the United States;

13 (H) reveal information that would clearly,
14 and demonstrably impair the current ability of
15 United States Government officials to protect
16 the President, Vice President, and other offi-
17 cials for whom protection services are author-
18 ized in the interest of national security;

19 (I) reveal information that would seriously
20 and demonstrably impair current national secu-
21 rity emergency preparedness plans; or

22 (J) violate a treaty or other international
23 agreement.

24 (3) APPLICATIONS OF EXEMPTIONS.—

1 (A) IN GENERAL.—In applying the exemp-
2 tions provided in subparagraphs (B) through
3 (J) of paragraph (2), there shall be a presump-
4 tion that the public interest will be served by
5 disclosure and release of the records of the Jap-
6 anese Imperial Army. The exemption may be
7 asserted only when the head of the agency that
8 maintains the records determines that disclo-
9 sure and release would be harmful to a specific
10 interest identified in the exemption. An agency
11 head who makes such a determination shall
12 promptly report it to the committees of Con-
13 gress with appropriate jurisdiction, including
14 the Committee on the Judiciary of the Senate
15 and the Committee on Government Reform and
16 Oversight of the House of Representatives.

17 (B) APPLICATION OF TITLE 5.—A deter-
18 mination by an agency head to apply an exemp-
19 tion provided in subparagraphs (B) through (I)
20 of paragraph (2) shall be subject to the same
21 standard of review that applies in the case of
22 records withheld under section 552(b)(1) of title
23 5, United States Code.

24 (4) LIMITATION ON EXEMPTIONS.—

(A) IN GENERAL.—The exemptions set forth in paragraph (2) shall constitute the only grounds pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

(B) RECORDS RELATED TO INVESTIGATION OR PROSECUTIONS.—This subsection shall not apply to records—

(i) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(ii) solely in the possession, custody, or control of the Office of Special Investigations.

(b) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of any operational file, that constitutes a Japanese Imperial Army record under this Act.

SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR JAPANESE IMPERIAL ARMY RECORDS.

For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person

1 who was persecuted in the manner described in section
2 2(a)(3) and who requests a Japanese Imperial Army
3 record shall be deemed to have a compelling need for such
4 record.

5 **SEC. 5. EFFECTIVE DATE.**

6 The provisions of this Act shall take effect on the
7 date that is 90 days after the date of enactment of this
8 Act.

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